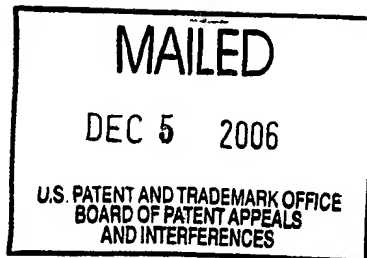


UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte EARL J. BRAXTON

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Application 10/034,720

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on November 15, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matter requiring attention prior to docketing is identified below:

An examination of the Image File Wrapper (IFW) reveals that a Reply Brief was filed on August 16, 2006.

37 CFR § 41.43 (2006) reads as follows:

§ 41.43 Examiner's response to reply brief.

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

(2) A supplemental examiner's answer responding to a reply brief may not include a new ground of rejection.

(b) If a supplemental examiner's answer is furnished by the examiner, appellant may file another reply brief under § 41.41 to any supplemental examiner's answer within two months from the date of the supplemental examiner's answer.

(c) Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications. . . .

In response to the Reply Brief filed August 16, 2006, the Examiner mailed an Office communication which acknowledged receipt and entry of the reply brief but also appeared to include rebuttal. The examiner must follow the guidelines set forth in training material entitled "Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule," located at the following URL:

[www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html](http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html)

It should be noted that in accordance with § 41.43, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a Supplemental Examiner's Answer responding to any new issue raised in the Reply Brief. A Supplemental Examiner's Answer responding to any new issue raised in the Reply Brief must be signed by a Technology Center Director. MPEP § 1208. A Supplemental Examiner's Answer may not include a new ground of rejection. If a Supplemental Examiner's Answer is furnished by the examiner, the appellant is permitted to file another Reply Brief under § 41.41 within two months from the date of the Supplemental Examiner's Answer.

Accordingly,

ORDERED that the application is returned to the examiner:

1. for a proper response to the Reply Brief filed August 16, 2006; and

2. for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: *G. P. Edger for Dale Shaw*  
DALE M. SHAW  
Deputy Chief Appeals Administrator  
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